IN THE HIGH COURT OF BOMBAY AT GOA.

LETTERS PATENT APPEAL NO. 12 OF 2000.

Smt. Ana Maria Coutinho,
r/o Garden Cottage, Rua
Bernardo da Costa, Margao. ... Appellant.

Versus

1. The Rent Controller,
   South Goa, Margao.
2. The Administrative Tribunal
   Goa, Daman and Diu through its
   Chairman, Coelho Pereira Bldg.,
   Dada Vaidya Road, Panaji.
3. Shri Armando Moraes,
   r/at Loay Enterprises, P.O.
   Box No. 1886, Ruwi, Oman,
   Muscat.
4. Shri Guilherme D'Souza,
   since deceased through L.Rs.
   (a) Alba D'Souza,
   (b) Marconi D'Souza,
   (c) Maria dos Anjos de Souza,
   (d) Ramona de Souza,
   (e) Raul Fernandes,
   (f) Amanda de Souza,
       all r/of Velsao.
   (g) Nelson D'Souza,
       Flat No. X-4, 4th Floor,
       Apna Bazaar, Margao. ... Respondents.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. J. Godinho, Advocate for the Appellant.

Mr. A.P. Lawande, Advocate for the Respondents 4(a) to (g).

Coram : R.J. KOCHAR AND
P.V. HARDAS, JJ.

Date : 3rd September 2003.

ORAL JUDGMENT (PER HARDAS, J.)

The learned Single Judge, by his Judgment, dated 10th October 1997, dismissed the Writ Petition No. 222 of 1994, on the ground that since the legal heirs of deceased respondent no. 1 were not brought on record

within the period of 90 days, the Writ Petition stood abated and unless the application for bringing the legal heirs on record was preceded by an application for setting aside the abatement, the Writ Petition stood abated. The learned Single Judge further held that no grounds were made out for condonation of the delay and, accordingly, dismissed the application and consequently the Writ Petition. It is this Judgment of the learned Single Judge, which is challenged in the Letters Patent Appeal filed by the original petitioner in the Writ Petition.

2. The appellant herein had filed Miscellaneous Civil Application No. 434 of 1995 seeking condonation of delay in bringing the legal heirs of the deceased respondent no. 1 on record. In the said application, it was averred that respondent no. 1 expired on 14th January 1995 and the fact of his death was brought to the notice of the appellant on 17th February 1995. The appellant then took steps to trace the names and addresses of the heirs of deceased respondent no. 1 and, therefore, an application for bringing the legal heirs of the deceased respondent no. 1 on record was filed on 26th September 1995 alongwith the application seeking condonation of delay. Admittedly, the delay in filing the application for bringing the names of the legal heirs of deceased respondent no. 1 on record was

of 5 months. The learned Single Judge, in paragraph 2 of the impugned Judgment, has held that on account of failure to bring the legal representatives of the respondent no. 1 within the stipulated period, the Writ Petition stood abated on the expiry of the said period. According to the learned Single Judge also unless the abatement was set aside, the application for condonation of delay was not maintainable. The learned Single Judge then found that the delay had not been properly explained and in the absence of any sufficient cause being made out, dismissed the application and consequently the Writ Petition.

3. The Apex Court, in **Puran Singh & Ors. v. State of Punjab & Ors.**, JT 1996 (1) S.C. 362, has held that the provisions of Order XXII of the Code of Civil Procedure do not apply to Writ Petitions and, consequently, there is no automatic abatement of Writ Petitions for failure to bring the legal heirs of deceased party on record. Mr. Lawande, the learned counsel appearing on behalf of respondents 4 (a) to (g) has conceded that there could be no automatic abatement of the Writ Petition. He has, however, urged that that petition arose against an Order, passed by the Rent Controller, under Section 32(4) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 and the Division Bench of this Court in Letters

Patent Appeal No. 8 of 2000, by Judgment, dated 25th July 2000, in Ramesh Laxman Pangam v. Manuel Domingo Fernandes and others, had held that a Letters Patent Appeal against the Judgment of a learned Single Judge deciding a petition against an Order of the Authorities below under Section 32(4) of the Act was not maintainable as the learned Single Judge was exercising his jurisdiction under Article 227 of the Constitution of India. The Judgment cited is wholly inapplicable to the facts of the present case as the learned Single Judge had not decided the Writ Petition on merits but had dismissed it on the grounds (1) that no application for setting aside the abatement had been filed and (2) the delay in filing the application for substitution by the names of the legal representatives had not been satisfactorily explained.

4. We have examined the application seeking condonation of delay. According to us, the appellant had stated that she derived knowledge about the death of respondent no. 1 on 17th February 1995. Thereafter she had made attempts to find out the names of the legal heirs, some of whom were residing abroad, at the relevant time. The appellant had approached the wife of deceased respondent no. 1, but she was too depressed and, hence, the appellant could not gain any information from her. In such circumstances, the appellant had

prayed that the delay in filing the application for bringing the legal representatives of the deceased respondent no. 1 on record be condoned. According to us, the appellant has satisfactorily explained the delay of 5 months in filing the application for bringing the legal representatives of respondent no. 1 on record. Apparently also the delay was not intentional and with any malafide intention. The appellant would not derive any advantage by purposely delaying the filing of the application. In these circumstances, according to us, the appellant has satisfactorily explained the delay in filing the application for bringing the legal representatives of deceased respondent no. 1 on record. Accordingly, we allow the Letters Patent Appeal. The Judgment of the learned Single Judge impugned in this Letters Patent Appeal is, hereby, quashed and set aside and the Writ Petition No. 222 of 1994 is restored to file. The delay in filing the application for bringing the legal representatives of deceased respondent no. 1 on record is condoned. Registry is directed to place the Writ Petition No. 222 of 1994 before the learned Single Judge. In the circumstances, there shall be no order as to costs.

(R.J. KOCHAR)
JUDGE.

(P.V. HARDAS)
JUDGE.

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